

FILED

JAN 18 2019

Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI RIVER DIVISION
JEFFERSON RIVER (BASIN 41G)

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ORDER DENYING REQUEST FOR STAY

The United States requested a stay of deadlines for filing of objections to water rights in a Preliminary Decree in the Jefferson River Basin (Basin 41G). The issue is whether a stay should be granted.

A court must exercise principled discretion when considering whether to issue a stay. Exercise of this discretion requires consideration of the costs and benefits of the stay for the court and the parties.

[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment which must weigh competing interests and maintain an even balance.

Landis v. N. Am. Co., 299 U.S. 248, 254–55 (1936).

Although stays can be used to control a court's docket, use of that tool should not be arbitrary. Issuance of a stay may not violate the constitution or applicable statutes.

State ex rel. Kennedy v. District Court, 121 Mont. 320, 336, 194 P.2d 256, 264 (1948).

There have been two decrees issued in the Jefferson River basin. The first was a Temporary Preliminary Decree issued October 17, 1989. Water users in the Jefferson River basin had an opportunity to object to the Temporary Preliminary Decree. Objections to the Temporary Preliminary Decree were filed and litigated by the United States. The United States and all other water users also had an opportunity to file notices of intent to appear regarding issues in the Temporary Preliminary Decree.

The Preliminary Decree for the Jefferson River basin was issued February 15, 2018. As with the Temporary Preliminary Decree, the window for objections to the Preliminary Decree was 180 days. § 85-2-233(2), MCA. “The water judge may, for good cause shown, extend this time limit up to two additional 90-day periods if application for an extension is made prior to expiration of the original 180-day period or any extension of it.” *Id.*

As permitted by statute, the United States filed a request for a 90-day extension of the original 180-day objection period which opened after issuance of the Preliminary Decree. That request for a 90-day extension was granted. Before the end of the 90-day extension, other parties requested and received a second and final 90-day extension. The United States did not request a second 90-day extension.

Extending the period for filing objections to Water Court decrees is an involved process. The Water Court must provide notice by mail of the availability of such decrees and the opportunity to object. § 85-2-232(1)(b), MCA. This notice must be provided “to each person who has filed a claim of existing right within the decreed basin or to that person’s successor as documented in the department’s records.” *Id.* The Water Court must also mail notice of availability of the decree “to the purchaser under contract for deed... of property in connection with which a claim of existing right has been filed....” § 85-2-232(1)(c), MCA. Notice of availability must also be published “at least once each week for 3 consecutive weeks in at least three newspapers of general circulation that cover the water division or divisions in which the decreed basin is located.” § 85-2-232(3), MCA.

As grounds for its present request for a stay, the United States indicates that the federal government is presently shut down due to a lapse of funding. The United States does not know when funding will be restored. The last and final objection period for filing objections to water rights in the Jefferson River Preliminary Decree closes February 11, 2019.

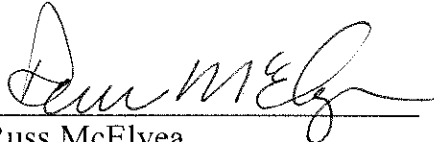
The United States’ request for a stay does not indicate how many objections the United States intends to file to water rights in the Jefferson River decree. It does not state

how many objections have been prepared to date, nor does it identify how many objections remain to be completed in preparation for filing. It is unknown whether the United States has completed all its potential objections, and if not, how many must be completed between now and the filing deadline. Finally, the United States has not explained why it failed to object to water rights in the Preliminary Decree during the normal 180-day objection period, or the two 90-day extensions already granted for filing such objections.

Given that the objection deadline for Basin 41G is a month away, and that the status of the United States' effort to complete objections to water rights in that decree is unknown, the Court declines to issue a stay of proceedings at this time.

The United States' request for a stay is denied.

DATED this 18th day of January, 2019.



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Chief Water Judge

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Note: Service List Updated 1/17/2019